IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 383 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

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5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KANUBHAI AMRABHAI KOLI

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Appeal No. 383 of 1994

MRS SHILPA J UNWALLA for the appellant

Ms. Hansa Punani, APP, for Respondent No. 1

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CORAM : MR.JUSTICE M.H.KADRI
and
MR.JUSTICE H.H.MEHTA

Date of decision: 21/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.H.KADRI)

1. The appellant-original accused has challenged his conviction under Section 307 of the Indian Penal Code and

the sentence imposed on him of R.I. for life and fine of Rs.500 in default S.I. for three months, and also the conviction under Section 302 of the Indian Penal Code ("IPC" for short) and the sentence imposed on him of R.I. for life and fine of Rs.500 in default S.I. for three months, recorded by the learned Additional Sessions Judge, Panchmahals at Godhra, by judgment and order dated March 23, 1994 in Sessions Case No.97 of 1993. Both the sentences imposed on the appellant were ordered to run concurrently.

2. The incident in question had taken place on February 10, 1992, at village Bhamaiyya, Taluka: Devgad-Baria, around 6 p.m. near the house of the complainant, P.W.6, Dalpatbhai Kalubhai. The complainant, P.W.6, Dalpatbhai Kalubhai, along with the appellant, Kanubhai Amrabhai Koli, Laxman Moti, Javarabhai Roopabhai, Rekhaben, and the wife of the complainant, had gone to bring the water pump to the house of the complainant. All the above-named persons had returned after bringing the water pump to the house of the complainant and were sitting in the house of the complainant. The complainant had gone inside his house to prepare tea. Laxman Moti [injured witness] had requested the appellant to move ahead, so that he could see the portrait of the Mataji. The appellant had got enraged when he was asked by Laxman Moti to move ahead from the place where he was sitting, and he took an axe which was lying in the house of the complainant. The appellant had started inflicting the axe blows on various parts of the body of the injured Laxman Moti. The complainant had run after the appellant. When the appellant had seen Motibhai Chhaganbhai, the father of the injured Laxman Moti, returning from the Bus-stand, he had started inflicting the blows with the axe on the neck and other parts of the body of Motibhai Chhaganbhai, as a result Motibhai Chhaganbhai was seriously injured and had fallen down. The wife of Motibhai Chhaganbhai, Bodiben, had tied a piece of cloth on the head of Motibhai. A tempo was called and in the said Tempo both the injured persons were taken to the Civil Hospital, Devgad-Baria. After giving primary treatment at the Civil Hospital, Devgad-Baria, as the condition of both the injured persons was critical, they were shifted to the Civil Hospital, Godhra. P.W.6, Dalpatbhai Kalubhai, had lodged First Information Report against the appellant around 11 p.m. at Devgad-Baria Police Station where it was registered at C.R. No.I-23/93. Motibhai Chhaganbhai had succumbed to the injuries at the Civil Hospital, Godhra, on February 11, 1993 around 12 noon. The inquest was held and the body of the deceased was sent for

post-mortem. P.W.7, Dr.Prabhakar R. Bhatia, had performed post-mortem of the dead body of the deceased. P.W.13, PSI, Sharma, of Devgad-Baria Police Station, was entrusted with the investigation of the above crime. PSI, Sharma, had collected incriminating articles at the time of drawing of panchanama of scene of offence. The muddamal axe was recovered which was having blood stains. The incriminating articles were sent to the Forensic Science Laboratory ('FSL' for short) for analysis. The appellant was arrested on February 12, 1993, under an arrest panchanama. After the death of Motibhai Chhaganbhai, a report was made to add offence punishable under Section 302 of the IPC in C.R. No.I-23/93 of Devgad-Baria Police Station. The injured witness, Laxman Moti, was shifted to the Civil Hospital, Ahmedabad, as he had sustained serious injuries on his eye.

3. On completion of the investigation, and on receipt of the medical case papers from the Civil Hospitals of Devgadh-Baria, Godhra and Ahmedabad, the report of the FSL as well as post-mortem notes, chargesheet against the appellant was filed in the Court of the Judicial Magistrate, First Class, Devgadh-Baria, for the offences punishable under Sections 307 and 302 of the IPC and under Section 135 of the Bombay Police Act, which came to be registered as Criminal Case No.269 of 1993. As the offence under Section 302 of the IPC is exclusively triable by the Court of Sessions, the learned Judicial Magistrate, First Class, Devgadh-Baria, had committed the case to the Court of Sessions, Panchmahals at Godhra, where it came to be numbered as Sessions Case No.97 of 1993.

4. Charge Exh.3 was framed against the appellant for the offences punishable under Section 307 of the IPC for the offence of attempt to commit murder of injured Laxman Moti and for offence under Section 302 of the IPC for committing murder of Motibhai Chhaganbhai and for the offence punishable under Section 135 of the Bombay Police Act. The charge was read over and explained to the appellant wherein he pleaded not guilty and claimed to be tried. The prosecution, in order to prove the charges framed against the appellant, examined: (1) P.W.1, Nanubhai Chemabhai, at Exh.8; (2) P.W.2, Babubhai Pratapbhai, at Exh.14;(3) P.W.3, Dr. Ravindrakumar Premshanker Prohit, Medical Officer of J.S. Chauhan Hospital, Devgadh-Baria, Exh.15; (4) P.W.4, Dr. Jamilaben Mohmad-Maksud, Medical Officer, Civil Hospital, Godhra, Exh.29; (5) P.W.5, Circle Inspector, Vinod Chandra N. Desai at Exh.23: (6) P.W.6, Dalpatbhai Kalubhai, complainant at Exh.26; (7) P.W.7, Dr.Prabhakar

R. Bhatia, Medical officer, Civil Hospital, Godhra, at Exh.28; (8) P.W.8, Laxmanbhai Motibhai, injured witness, at Exh.31; (9) P.W.9, Bai Bodiben Motibhai, widow of deceased Motibhai Chhaganhai, at Exh.32; (10) P.W.10, Javarabhai Roopabhai, eye-witness, at Ex.33; (11) P.W.11, Rekhaben Motibhai, daughter of deceased Motibhai; at Exh.34; (12) P.W.12, PSO, Somabhai Motibhai, at Exh.35; and (13) P.W.13, PSI, O.L. Sharma, Investigation Officer, Exh.36. The prosecution had also produced documentary evidence such as panchanama of place of incident Exh.9, panchanama of recovery of muddamal axe, Exh.10, inquest panchanama Exh.11, panchanama of recovery of clothes of the appellant, Exh.13, panchanama of recovery of clothes of the deceased Exh.14, medico-legal certificate of deceased Motibhai Chhaganbhai, medico-legal certificate of injured Laxman Moti, post-mortem notes at Exh.30, report of the FSL at Exh.38, Notification of the District Magistrate, Panchmahals, Godhra, under Section 37(1) of the Bombay Police Act, at Exh.39, to prove the case against the appellant.

5. After the evidence of the prosecution was over, the appellant was questioned generally and his statement came to be recorded under Section 313 of the Code. The defence of the appellant was of general denial. No witness in defence was examined by the appellant.

6. The learned Additional Sessions Judge, on appreciation of oral as well as documentary evidence and the arguments advanced by the learned Additional Public Prosecutor and the learned advocate for the defence, held that: (i) Motibhai had died a homicidal death; (ii) the appellant, with intention and knowledge, had caused death of Motibhai Chhaganbhai and inflicted successive blows on the vital parts of the body of the deceased; (iii) the injuries sustained by the deceased were sufficient in the ordinary course of nature to cause his death; (iv) the appellant had made an attempt to commit the murder of injured, Laxmanbhai Motibhai, by inflicting blows on his head and vital parts of the body; and (v) the appellant had kept in his possession a lethal weapon, namely, axe, by which he had committed offence punishable under Sections 307 and 302 of the IPC in breach of the notification issued by the District Magistrate, Panchmahals, Godhra, and had committed offence punishable under Section 135 of the Bombay Police Act. On the basis of the abovereferred to conclusions, the learned Additional Sessions Judge has convicted the appellant for the offences punishable under Section 307 of the Indian Penal Code and sentenced him to undergo R.I. for life and fine of Rs.500 in default S.I. for two months, and

also convicted him for the offence punishable under Section 302 of the Indian Penal Code and sentence imposed him to undergo R.I. for life and fine of Rs.500 in default S.I. for three months, which sentences were ordered to be run concurrently, which has given rise to filing of the present appeal.

7. Learned counsel, Ms.Shilpa Unwala, for the appellant and learned APP, Ms. Hansa Punani, have taken us through the entire record and proceedings of Sessions Case No.97 of 1993. We have also minutely scrutinized and reappreciated the entire evidence led by the prosecution at the trial.

8. The learned advocate for the appellant has strenuously urged that, prior to the incident, the appellant, in the company of the complainant, P.W.6, Dalpatbhai Kalubhai, and the injured witness, Laxman Moti, had gone to the field of the complainant to bring back the water pump machine and, while they were bringing back the machine, the injured witness, Laxman Moti, had given a kick to the appellant on the pretext that he was not lifting the machine properly which had led to the occurrence of the incident. It is submitted that, by giving the kick, the appellant was provoked, and, after return to the house of the complainant, he had picked up the axe and inflicted the blows on the head of the injured witness, Laxman Moti. The learned advocate for the appellant has next urged that the witnesses examined by the prosecution were related to each other and were not independent witnesses. It is further urged that there were many contradictions in the evidence of the witnesses examined by the prosecution and, therefore, the learned Additional Sessions Judge has erred in relying upon the evidence of those interested and related witnesses for convicting the appellant. It is next urged that the appellant had committed offences in grave and sudden provocation and, therefore, the case would fall under Part I or Part II of Section 304 of the IPC and not under Section 302 of the IPC and, therefore, the appeal be allowed and the conviction and sentence imposed on the appellant be modified and altered accordingly.

9. The learned Additional Public Prosecutor, on the other hand, has supported the findings recorded by the learned Additional Sessions Judge. The learned APP has submitted that the appellant had acted in a most cruel manner and had selected vital parts of the body of the deceased, Motibhai Chhaganbhai, for inflicting the axe blows, and had made an attempt to commit the murder of injured witness, Laxman Moti. It is further submitted

that the appellant had given the blows of axe on the vital part i.e. on the neck of the deceased Motibhai Chhaganbhai which were sufficient in the ordinary course of nature to cause his death. It is further submitted that there was no sudden provocation so as to attract the provisions of Section 304 of the IPC. It is further submitted that the injured witness, Laxman Moti, had not acted in a manner so as to cause sudden provocation to the appellant and, therefore, the offences committed by the appellant would not fall either under Part I or Part II of Section 304 of the IPC, and, therefore, the appeal be dismissed and the sentence imposed on the appellant be confirmed.

10. We have heard at length the submission of the learned advocates of the respective parties appearing in the appeal. We have minutely scanned through and reappreciated the entire evidence adduced at the trial. There is no manner of doubt that the deceased Motibhai Chhaganbhai had died homicidal death. The oral testimony of P.W.7, Dr.Prabhakar R. Bhatia, Medical Officer, Civil Hospital, Godhra, and the post-mortem notes Exh.30 make it clear that the deceased had died homicidal death.

11. The evidence of the independent eye-witness, P.W.10, Javarabhai Roopabhai, had indicated that the appellant was not related to the deceased or injured witness Laxman Moti. The witness had deposed that he had gone to fetch the water pump from the field of the complainant, P.W.6, Dalpatbhai Kalubhai, and after bringing the machine from the field, had kept that machine in the house of the complainant, P.W.6, Dalpatbhai Kalubhai; that, all the persons who had gone to fetch the machine were waiting for tea at the house of the complainant; that, at that point of time, when the injured witness, Laxman Moti, had told the appellant to move ahead so that he can watch the portrait of Mataji, the appellant had got excited and inflicted the blows with the axe which was lying in the house of the complainant, P.W.6, Dalpatbhai Kalubhai, and had inflicted blows on the head which had landed near the right eye; that, all the persons including the eye-witness P.W.10, Javarabhai Roopabhai, had run away from the place of the incident and the appellant had chased them; that, in the meantime, when the appellant had seen the deceased Motibhai Chhaganbhai coming from the direction of the Bus-stand, he had inflicted blows with the axe on his neck. The evidence of other eye-witnesses, namely, injured Laxman Moti, widow of the deceased P.W.9, Bodiben, the evidence of the complainant, P.W.6, Dalpatbhai Kalubhai, and the evidence of P.W.11,

Rekhaben Motibhai, lends corroboration to the evidence of the eye-witness, P.W.10, Javarabhai Roopabhai. Minor contradictions were brought in the evidence of the witnesses, but, in our view, those contradictions do not destroy substratum of the case of the prosecution. The incident had taken place in a broad-day light in the heart of the village. The presence of the witnesses at the scene of offence was proved beyond doubt. We are not prepared to believe that those witnesses were related either to the deceased or to the injured and had falsely implicated the appellant. On the contrary, the witnesses examined by the prosecution had deposed in a most natural way. The eye-witness, P.W.10, Javarabhai Roopabhai, was not related either to the appellant or to the deceased and, therefore, he would not falsely implicate the appellant with the commission of the crime. The oral evidence also gets corroboration from the report of the FSL and recovery of the blood-stained axe immediately after the incident from the possession of the appellant.

12. From the evidence of the prosecution, it is borne out that, because of old enmity, the appellant, just to take revenge on the family of the deceased, Motibhai Chhaganbhai, had acted violently and had inflicted successive blows on the vital parts of the body of the deceased as well as the injured witness, Laxman Moti. By no stretch of imagination, it can be said that, due to grave and sudden provocation, the appellant had acted violently and inflicted fatal blows on the deceased as well as on the vital parts of the injured witness, Laxman Moti, to commit the murder. Bearing in mind the circumstances in which the incident had taken place, we are of the view that the appellant with full knowledge and intention had acted violently and selected deadly weapon for inflicting blows on the neck of the deceased knowing fully well that the blows inflicted with the axe were sufficient in the ordinary course of nature to cause his death. Even the blows inflicted on the head of the injured witness, Laxman Moti, were also likely to cause his death. The injured witness, Laxman Moti, had lost his right eye due to infliction of the axe blow on his head which had landed near his right eye. The witnesses examined by the prosecution have deposed in most natural way and we find their evidence most trust-worthy and reliable. The evidence adduced by the prosecution before the Sessions Court inspires confidence and there is no reason to discard the evidence of the eye-witnesses. Therefore, the prosecution had proved beyond doubt that the appellant had committed offences punishable under Sections 307 and 302 of the IPC. The conviction of the appellant for the offence punishable under Section 135 of

the Bombay Police Act is also proved beyond doubt as the appellant had committed breach of the notification Exh.39 issued by the District Magistrate, Panchmahals, at Godhra, under Section 37(1) of the Bombay Police Act, which was in force at the time of commission of crime. Taking into consideration totality of all the circumstances and the evidence led by the prosecution at the trial, by no stretch of imagination, it can be said that the findings recorded by the learned Additional Judge are perverse or against the evidence led by the prosecution. The conviction of the appellant under Sections 307 and 307 of the IPC and the sentences imposed on him, therefore, deserve to be confirmed.

13. As a result of foregoing discussion, there is no merit in the appeal and the appeal is dismissed. The conviction of appellant, Kanubhai Amrabhai Koli, under Section 307 of the Indian Penal Code and the sentence imposed on him of R.I. for life and fine of Rs.500 in default S.I. for three months, and also the conviction under Section 302 of the Indian Penal Code and the sentence imposed on him of R.I. for life and fine of Rs.500 in default S.I. for three months, recorded by the earned Additional Sessions Judge, Panchmahals at Godhra, by judgment and order dated March 23, 1994 in Sessions Case No.97 of 1993, are hereby confirmed. Muddamal be destroyed in terms of the directions given by the learned Additional Sessions Judge in the impugned judgment and order.

June 21, 2003 (M.H. Kadri, J.)

(H.H.Mehta, J.)
(swamy)